1 2 3 4 5 6 7	Alex I. Poust, OSB #925155 Email: apoust@schwabe.com Schwabe, Williamson & Wyatt, P.C. Pacwest Center 1211 SW 5th Ave., Suite 1900 Portland, OR 97204 Telephone 503.222.9981 Fax 503.796.2900 Of Attorneys for Creditor, CNH Capital	l America LLC
8	IN THE UNITED STATI	ES BANKRUPTCY COURT
10	FOR THE DIST	RICT OF OREGON
11	In re	Chapter 13
12	Eugene Tyrone Alwine	No. 09-39313-rld13
13 14	Bobbi Lee Alwine, Debtors.	AMENDED OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN DATED NOVEMBER 23, 2009
15 16 17		Hearing Date: January 28, 2010 Hearing Time: 9:00 a.m. Hearing Location: US Bankruptcy Court, Courtroom # 3
18	'	
19	•	bjects to confirmation of the debtors' proposed
20		"Plan"), on the grounds that (a) the Plan does not
21	provide for payment in full of CNH's secured of	claims, and (b) debtors have no interest in some of
22	CNH's collateral, which is owned not by debto	rs, but by their affiliated company. In support of
23	this amended objection CNH alleges as follows	3:
24	1. On or about August 2, 2005, del	otor Eugene Tyrone Alwine ("Alwine") executed
25	a Retail Installment Contract and Security Agree	eement for the purchase of a Hitachi Excavator,
26	Model EX120-3, serial number 42564 ("2005 A	Agreement"). A true and correct copy of the 2005
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Page 1 of 4- AMENDED OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN

SCHWABE, WILLIAMSON & WYATT, P.C. Attorneys at Law Pacwest Center 1211 SW 5th Ave., Suite 1900 Portland, OR 97204 Telephone 503.222.9981

- 1 Agreement is attached and incorporated as Exhibit A. The balance owing under the 2005
- 2 Agreement is \$11,953.93 and the equipment has a value of approximately \$28,000.00. The Plan
- 3 undervalues the property at \$6,000.00. Because CNH is oversecured, and pursuant to 11 U.S.C.
- 4 §1325(a)(5), CNH is entitled to the full amount of its secured claim, plus post-confirmation
- 5 interest at the contract rate of 9.5% per annum.
- 6 2. On or about November 30, 2004, debtors' affiliate, 9-Mile Construction &
- 7 Excavation, Inc. ("9-Mile"), executed a Retail Installment Contract and Security Agreement for
- 8 the purchase of a Takeuchi Track Loader, Model TL130, serial number 21301629 ("2004")
- 9 Agreement"). A true and correct copy of the 2004 Agreement is attached and incorporated as
- Exhibit B. The balance owing under the 2004 Agreement is \$9,091.35 and the equipment has a
- value of \$9,500.00. The Plan, however, undervalues the equipment at \$8,000. Debtors have no
- interest in the Loader or the 2004 Agreement, which are not part of the Alwines' bankruptcy
- estate. Alternatively, even if the Loader were part of this bankruptcy estate, under 11 U.S.C.
- 14 §1325(a)(5), CNH is entitled to the full amount of its secured claim, plus post-confirmation
- interest at the rate of 10.25% per annum.
- On or about March 7, 2006, 9-Mile executed a Retail Installment Contract and
- 17 Security Agreement for the purchase of a Takeuchi Excavator, Model TB145, Serial Number
- 18 14514744 ("2006 Agreement"). A true and correct copy of the 2006 Agreement is attached and
- incorporated as Exhibit C. The balance owing under the 2006 Agreement is \$28,781.29 and the
- equipment has a value of not less than \$22,000.00. The Plan undervalues the equipment at
- \$18,000.00. Again, debtors have no interest in the Excavator or the 2006 Agreement, which are
- 22 not part of the Alwines' bankruptcy estate. Alternatively, even if the Excavator were part of this
- bankruptcy estate, under 11 U.S.C. §1325(a)(5), CNH is entitled to the full amount of its secured
- 24 claim, plus post-confirmation interest.
- 25 ///
- 26 ///

Page 2 of 4- AMENDED OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN

SCHWABE, WILLIAMSON & WYATT, P.C. Attorneys at Law Pacwest Center 1211 SW 5th Ave., Suite 1900 Portland, OR 97204 Telephone 503.222.9981

1	For the foregoing reasons, the Plan should not be confirmed. Alternatively, the Plan
2	should be modified to provide for payment of CNH's secured claims, without waiver of its rights
3	and remedies against 9-Mile.
4	Dated this 26th day of January, 2010.
5	SCHWABE, WILLIAMSON & WYATT, P.C.
6	
7	By: /s/ Alex I. Poust
8	Alex I. Poust, OSB #925155 apoust@schwabe.com
9	Facsimile: 503.796.2900 Of Attorneys for Creditor, CNH Capital
10	America LLC
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SCHWABE, WILLIAMSON & WYATT, P.C. Attorneys at Law Pacwest Center 1211 SW 5th Ave., Suite 1900 Portland, OR 97204 Telephone 503.222.9981

CNH Capital RETAIL INSTALLMENT SALE CONTRACT AND SECURITY AGREEMENT

Dealer No. 01423	
Credit Application No. 99411-A	
	_
's Lanal Name and Address)	_

	•	Fixed		CI	edit Application	on No <u>.99</u>	411-A
"Buyer(s)": Legal Name(s), Street Address, City, State, Zip Code EUGENE AL-WINE 1147 SE 1ST AVE SUITE#108 CANBY,OR 97013 K Individual/Sole If So, State of Print Residence: OR General Partn		"Seller": (Dealer's Legal Name and Address) METRO TRACTOR, INC. P.O. BOX 340 12111 S.E. HWY. 212 CLACKAMAS, OR 97015					
		If So, State of Ci Executive Office		Clackamas Cour	ity		
County/Paris	h Clackamas	Corporation					
Social Secur	6007	if So, State In W Organization ID					
The under	signed Buyer (if more than one, collective t") at the Time Sale Price and upon the term	ly called "Buyer") hereby		Seller and Seller he	reby sells to B	uyer the	following goods (the
NEW* OR USED	"EQUIPMENT" (Make and Type)	MODEL	SERIAL NUMBER		HOURS	HOURS "CASH SALE PR	
U	Hitachl Excavator	EX120-3	42564		3456.0		39,500.00
The above E unit or a der been manufa	quipment is purchased for XI commercial/busin nonstrator for which the manufacturer will sup ictured in a year prior to the year of purchase.	ess use 🗆 agricultural use. ply all or a portion of a new	*New Equipment Is equipment warran	s unused equipment, a re ty, this Equipment may i	ntal nave TOTAL		39,500.00
MAKE	"TRADE-IN EQUIPMENT" TYPE MODEL	SERIAL NUMBER	HOURS	GROSS ALLOWANCE (In Dollars)	SECURE DEBT DU (in Dollars	JE I	NET TRADE-IN ALLOWANCE (In Dollars)
				N/A		N/A	N/A
NO WARRANTY. The Equipment is sold AS is except for any applicab warranty applies to the Equipment, such warranty is restricted to the man manufacturer make no other representation or warranty, express or implifitness for particular purpose." Neither Seller nor manufacturer will be lie express warranty or any implied warranty imposed by law." "Some states do not allow these limitations and exclusions, and they sha applicable state law. PREPAYMENTS. Buyer may make a partial prepayment of the unpaid time balance hereunder (the "Time Balance") at any time, but any partial prepayment will not change or defer Buyer's next scheduled payments. If Buyer prepays the full unpaid Time Balance on construction equipment for commercial/business use, Buyer shall pay a prepayment fee of up to \$150, unless such fee is prohibited by applicable law. LATE CHARGES/DEFAULT RATE/RETURNED CHECKS. Buyer shall pay a			BUYER REI PURCHASED NOTICE TO 1. DO NOT ADDITIO	PRESENTS THAT FOR FAMILY, HOUS THE BUYER: 'SIGN THIS BEFOINAL PAGES, EVEN II	THE EQUIP EHOLD OR PI RE YOU REA OTHERWISE	PMENT ERSONA D THE E ADVISE	IS NOT BEING LUSE. WRITING ON THE
late charge permitted by maturity (by	on each payment more than 10 days past applicable law. Buyer shall pay interest of acceleration or otherwise) at the highest re	due at the highest amount n the unpaid balance after ate permitted by applicable	3. YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN.				
law. If a check is returned for any reason, Seller or Assignee may charge Buyer a returned check processing fee as established by Seller or Assignee from time to time not to exceed the maximum permitted under applicable law. EXTENSIONS AND REFINANCING. If Seller or Assignee extends, defers or refinances any payments due under this Agreement, Seller or Assignee may, at its option, increase the Time Price Differential Rate. SECURITY INTEREST AND COLLATERAL. Buyer hereby grants to Seller a security interest in the Equipment, and in all improvements, parts and accessories belonging to the Equipment, and all substitutions, replacements, products, proceeds (such as insurance proceeds) and all accessions related to the Equipment (the Equipment and such items are collectively referred to herein as the "Collateral"), to secure payment and performance of all evisting and future obligations of Buyer under this agreement (the "Agreement") or any other agreement between Buyer and Seller, between Buyer and Assignee or any affiliate of Assignee (the "Obligations"). Loss of or damage to the Equipment shall not release Buyer from any of the obligations. Upon request, Buyer shall take any action reasonably deemed necessary by Seller to protect and enforce Seller's interest in the Collateral or rights under this agreement. Seller is authorized to examine the Collateral wherever located at any easonable time or times. Buyer authorizes Seller to insert in this Agreement, or amend any financing statement or title registration documentation to reflect, the serial and/or model numbers of the Equipment if unknown at the time this typerement is executed and to correct any errors in such numbers or any other errors in the description of the Equipment.			PARTIES ON THE ADDITIONAL PAGES OF THIS AGREEMENT ARE A PART OF THIS AGREEMENT. THE FIRST PAGE MUST BE SIGNED, AND ALL OTHER PAGES INITIALED BY THE BUYER(S).				
			a copy of this the terms of the	Agreement. I agree to als Agreement.			
			08-02-2005 Date F	EUGENE ALWINE Vint Name			
			Date X Seller's Repres 08-02-2005	Fint Name	NC.	> ,	Title (if applicable)

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CNH CAPITAL COPY

V7.1

39,500.00

8,622.50

30,877.50

N/A

10.00

12.50

100.00

N/A

N/A

N/A

N/A

N/A

N/A

122.50

31,000.00

8,200.32

39,200.32

47,822.82

9.50 % (this is a

08-02-2005

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CNH Capital

1. Cash Sale Price

4. Other Charges

2. Cash Down Payment

Net Trade-in Allowance

Manufacturer's Rebate

Total Down Payment

(b) Official Fees

(a) Taxes (Not in Cash Price)

(c) UCC Filing Service Fee

(e) Physical Damage Insurance

(g) Credit Accident & Health Insurance

(j) Extended Service Protection Plan

5. Unpaid Balance (Amount Financed) (3+4)

6. Time Price Differential (Finance Charge)

8. Time Sale Price (Total Sale Price) (1+4+6)

(i) Manufacturer's Extended Warranty Plan

7. Time Balance to be Peld (Total of Payments) (5+6)

9. The Unpaid Balance hereof shall bear Finance Charges computed at a per annum

rate (the "Time Price Differential Rate" or "APR") equal to_

(d) Administrative Fee

(f) Credit Life Insurance

(h) Liability Insurance

Total Other Charges

FIXED RATE contract).

10. Date APR begins accruing:

(k) (Other)

3. Unpaid Balance of Cash Sale Price (1 minus 2)

STATEMENT OF TRANSACTION

8,622.50

N/A

N/A

3.\$

4. \$

5. \$

Mo.

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	Dealer No.	lication No. 99	3411-A		
	Great App Ruser Nan	ne EUGENE AL	WINE		
	Dayor Hun				
Buyer a accorda	grees to pay nce with the f	to the order or ollowing schedul	f Seller t le:	he Time Balar	ice (line item 7) in
	NO, OF PAYMENTS	PERIOD OF PAYMENTS		OUNT OF PAYMENT	BEGINNING MM/DD/YYYY
<u> </u>	59	1 Month	\$	653.35	09/15/2005
L	1	1 Month	\$	652.67	08/15/2010
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The total	l "Secured Debi	iDue" is \$			N/A
The sec	ured debt on th	e Trade-in Equipn	nent is owe	ed to:	
Lender I	Vame			Acct. No	
				Phone No	
Lender	Address		12		
Lender (City	S	tate		Zip
Payoff G	ood Through:_				
п					
		epresents that the			
Equipm	ent free and c	lear of all encum	brances	except as noted	t in the Trade-in Jabove.
er the Ag nd, pay a amendr ect, prim ized tem	greement, and any sum due nents, or exte lary, and conti ns used in th	l all modification under the Agre- nsions of the Ag- inuling obligation is Guaranty hav	ns and ex ement an preement, is of the u	tensions there d all modificati and of Buyer's indersigned an me meaning g	of, including prompt ons and extensions nonperformance or d the undersigned's iven to them in the
_ A	.ddress:				

	Buyer hereby conveys to Seller all right, title and interest in the Trade-in Equipment free and clear of all encumbrances except as noted above.
GUARANTY:	
payment of all sums when due. The undersigned shall, immediately upon dem thereof, without setoff. The undersigned hereby waives notice of any modification because if the Agreement. The payment childrefune, under this Guarding are the	nder the Agreement, and all modifications and extensions thereof, including prompi and, pay any sum due under the Agreement and all modifications and extensions is, amendments, or extensions of the Agreement, and of Buyer's nomperformance or direct, primary, and continuing obligations of the undersigned and the undersigned's alized terms used in this Guaranty have the same meaning given to them in the
Guarantor Signature:	Address:
Print Name:	City, State, Zip:

X Buyer's Initials

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age 2 of 5

EXHIBIT A
PAGE OF CO

Dealer No. 01423	
Credit Application No. 99411-A	
Buyer Name EUGENE ALWINE	
, , , , , , , , , , , , , , , , , , , ,	

ADDITIONAL PROVISIONS

- Assignment, Seller will assign this Agreement to CNH Capital America LLC (hereinafter "Assignee"). Buyer acknowledges that Seller has the right to assign this Agreement, that all rights and benefits but no obligations (if any) of Seller under this Agreement may be exercised by Assignee and that no obligations (if any) of Seller pass to Assignee. Upon receipt of notice from Assignee with instructions for payment, Buyer shall make all payments due under this Agreement directly to Assignee. This Agreement shall be binding on and inure to the benefit of Buyer and Seller and their respective heirs, personal representatives, successors or assigns; provided, however, that Buyer may not assign its obligations under this Agreement to any person without Assignee's prior written consent.
- Notification of Change in Residence, Principal Office, or Organizational Form. If Buyer changes (a) its state of principal residence, or (b) the state in which its chief executive office is located, or (c) the state in which its corporation, limited liability company or limited partnership is organized, or (d) its form of organization (such as from an individual to a corporation), Buyer will notify Assignee in writing promptly, but in no event more than thirty days after any such change.
- Waiver of Defenses Against Assignee; Indemnification. Buyer will not assert against Assignee any claim or defense which Buyer may have against Seller or the manufacturer of the Equipment. Buyer agrees that its obligation to remit payments will not be subject to, and it will not make any claim against Assignee for breach of any representation, warranty or condition with respect to the Equipment and that its obligation to pay Assignee all amounts under this Agreement is absolute and unconditional without abatement, reduction, set-off, counterclaim or interruption for any reason whatsoever, notwithstanding any breach or alleged breach of any representation, warranty or condition with respect to the Equipment or any dispute which now or hereafter arises between Buyer and Seller or any other person. Buyer shall indemnify and hold hamless Seller, Assignee and their officers, directors, employees and agents from and against any damage, loss, theft or destruction of the Equipment or any part thereof, and from and against any and all loss, damages, injuries, claims, demands, costs and expenses to any kind and nature, arising out of or connected with the use, condition (including without limitation reasonable attomeys' fees and expenses) of any kind and nature, arising out of or connected with the use, condition (including without limitation, all defects whether or not discoverable by Buyer, Seller or Assignee) or operation of the Equipment or any part thereof. Buyer shall promptly notify Assignee of any loss, damage, theft, destruction, Injury, claim, demand, cost or expense related to this Agreement or the Equipment of which Buyer has notice.
- Buyer's Covenants. Buyer shall (i) keep the Equipment in the county of Buyer's address set forth on page 1 of this Agreement and not remove the Equipment from such address, except temporarily in connection with its ordinary use, unless Assignee consents in writing; (ii) maintain the Equipment in good condition and repair and not permit its value to be impaired; (iii) keep the Collateral free of all liens, encumbrances and security interests of persons other than Assignee; (iv) defend the Collateral against all claims and legal proceedings by persons other than Assignee; (v) pay and discharge when due all taxes, fees, levies and other charges upon the Collateral; (vi) pay when due all taxes arising from the purchase of the Equipment under this Agreement, excluding any taxes based upon Seller's net income; (vii) use Equipment solely in the conduct of Buyer's business; (viii) ensure Equipment will be used solely within the intended uses of the manufacturer during the term of this Agreement; (bx) not sell, lease or otherwise dispose of the Equipment nor permit the Equipment to become an accession to other goods or a fixture; (x) not permit the Equipment to be used in violation of any law, regulation or policy of insurance; and (xi) strictly follow the terms of Provision 1 of this Agreement.

Each individual executing this Agreement represents and warrants that he or she has the requisite power and authority to enter into this Agreement and execute all related documents, to perform its obligations and consummate the transactions contemplated under this Agreement and related documents and that the execution and delivery of this Agreement and all related documents and the consummation of the transactions under this Agreement have been duly authorized by the Buyer.

Insurance. Buyer shall keep the Equipment and Seller's and its assigns interest in it insured against fire, theft, physical damage and other hazards under policies listing Assignee as loss payee or as an additional insured, with such provisions, for such amounts (but not less than the unpaid balance outstanding under this Agreement) and by such insurers as shall be satisfactory to Assignee from time and time, and shall furnish to Assignee evidence of such insurance satisfactory to Assignee. Such insurance shall provide at least 30 days written notice of cancellation, lapse or expiration to Assignee. Buyer assigns (and directs any insurer to pay) to Assignee Buyer's interest in the proceeds of all such insurance and any premium refund and Assignee may, at its option, apply such proceeds and refunds to any unpaid balance of the Obligations, whether or not due, and/or to repair or restore the Equipment, returning any excess to Buyer. Buyer must make all payments due under this Agreement whether or not the Equipment is insured or underhaured. Assignee is authorized, in the name of Buyer or otherwise, to make, adjust and/or settle claims under any insurance on the Equipment, or cancel the same after the occurrence of an event of default.

If Buyer purchased physical damage insurance that is financed under this Agreement, Buyer hereby requests and authorizes Seller (provided Seller is properly licensed to do so) or Seller's designee; (a) to arrange physical damage insurance for the benefit of Seller and Buyer that covers physical damage to the Equipment, (b) to replace or otherwise modify such insurance as Seller deems appropriate and (c) to be Buyer's attorney-in-fact to make claim for, receive payment of and execute and endorse and negotiate all documents, checks or drafts received in payment of loss or damage under the insurance. This Agreement includes and hereby incorporates by reference any insurance and Extended Service Plan Addendum signed in connection with this Agreement.

STATEMENT TO BUYER: THE PHYSICAL DAMAGE INSURANCE PURCHASED UNDER THE TERMS OF THIS AGREEMENT COVERS ONLY LOSS OF OR DAMAGE TO THE EQUIPMENT, LIABILITY INSURANCE COVERAGE FOR BOILLY INJURY AND PROPERTY DAMAGE COVERAGE TO THE SHOT INCLUDED AS PART OF THE PHYSICAL DAMAGE INSURANCE, BUYER UNDERSTANDS THAT IF INSURANCE IS FINANCED UNDER THIS AGREEMENT, PRE-PAYMENT OF BUYER'S OBLIGATIONS OR TERMINATION OF THIS AGREEMENT MAY RESULT IN LOSS OF INSURANCE COVERAGE.

If Buyer purchased liability insurance that is financed under this Agreement, Buyer hereby requests and authorizes Seller (provided Seller is authorized to do so) or Seller's designee to arrange for the liability insurance to be issued;

- Modifications and Waivers. This Agreement sets forth the entire understanding between Seller and Buyer. No modification, amendment or extension of this Agreement and no waiver of any provision of this Agreement shall be valid unless in writing and signed by the parties and a waiver of any default hereunder by Seller shall not constitute a waiver of any other prior or subsequent default, except that Buyer authorizes Seller to insert in this Agreement the serial number and/or model number of any Equipment if this information is unknown when this Agreement is executed or to correct any errors in such numbers or any other patent errors in the description of the Equipment.
- Authority of Assignee to Perform for Buyer. If Buyer fails to perform any of Buyer's duties set forth in this Agreement (including, specifically but without limitation, the purchase of insurance), Assignee may, at its option, in Buyer's name or otherwise, take any such action, including, without limitation, signing Buyer's name or paying any amount so required, and all costs and expenses incurred by Seller or Assignee in connection therewith shall form part of the Obligations and shall be payable by Buyer upon demand with interest from the date of payment by Seller or Assignee at the highest rate permitted by law.
- Default, Buyer shall be in default under this Agreement if any of the following occurs:
 - Buyer fails to pay when due any of the Obligations, or to perform any other obligation of Buyer in this Agreement or in any renewal or refinancing of this
 - (b)
 - a Buyer dies, ceases to exist, becomes insolvent or the subject of bankruptcy, insolvency or liquidation proceedings, attempts to assign this Agreement or attempts to remove, sell, transfer, further encumber, part with possession of or subjet any Equipment; any warranty or representation made by Buyer to induce Seller or Assignee to extend credit to Buyer, under this Agreement or otherwise, is false in any material respect when made or Buyer fails to perform any covenant under this Agreement; (c)

 - Buyer falls to maintain applicable required insurance or falls to comply with the requirements of any such insurance; any other event occurs that causes Seller or Assignee, in good faith, to consider that payment of performance of the Obligations is impaired or that the Equipment is at risk; or (e)

the Equipment is impounded or confiscated by any federal, state or local governmental authority.

Buyer's initials

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Dealer No. 01423		
Credit Application No.	99411-A	
Buyer Name_EUGENE	ALWINE	

- 9. Expenses. To the extent not prohibited by law, Buyer shall reimburse Seller or Assignee for any expense incurred by Seller or Assignee in protecting or enforcing their rights under this Agreement, including, without limitation, reasonable attorneys' fees and legal expenses and all expenses of taking possession, transporting, holding, repairing, refurbishing, preparing for disposition and disposing of the Collateral, and all expenses and costs incurred in collecting the Obligations, and all such expenses shall form part of the Obligations.
- 10. Conflict with Law. Any provision of this Agreement prohibited by applicable law shall be ineffective to the extent of the prohibition without invalidating the remaining portions of this Agreement. The validity, construction and enforcement of this Agreement are governed by the laws of the state in which the Seller is located. All terms not otherwise defined have the meanings assigned to them by the Uniform Commercial Code.
- 11. Authorization to Execute and File Financing Statements and Lien Documents. Buyer hereby authorizes Seller or Seller's designee to execute and file financing statements, and any motor vehicle title, registration and lien notification documentation, and any amendments thereto on behalf and in the name of Buyer to evidence Seller's security interest in the Collateral.
- 12. Time Price Calculations. If this is a variable rate contract, the Prime Rate for a given calendar month shall be the rate designated as the "Prime Rate" as published in *The Wail Street Journal* on the twentieth day of the prior calendar month (or on the next day published if not published on the twentieth day). If *The Wail Street Journal* ceases publication permanently or no longer publishes a "Prime Rate", the Prime Rate shall mean the prime loan rate of any federally chartered bank selected by Assignee. The payments, including Time Price Differential (Finance Charge) indicated herein, have been calculated using the Time Price Differential Rate (APR) in effect at the commencement of this Agreement and indicated herein. The final payment shall be recalculated to reflect increases/decreases in the Prime Rate during the remaining term. The Time Price Differential Rate (APR) shall never be less than 0%.

For all contracts, the Time Price Differential Rate (APR) shall be calculated for the actual number of days elapsed, using a daily rate determined by dividing the annual rate by 365. Buyer shall make all payments in lawful money of the United States of America.

13. Remedies upon Default. Upon the occurrence of any event of default, Seller shall have all rights and remedies provided by the Uniform Commercial Code or any other applicable law and Seller may, at its option: (i) dectare all Obligations immediately due and payable (excluding the unearned Time Price Differential) without notice or demand, nor any waiver of intent to accelerate or notice of acceleration; (ii) take possession of the Coltateral, without notice or hearing, and, where permitted by law, Buyer expressly waives any right to notice or a prior hearing; (iii) render the Equipment unusable; (iv) require Buyer to assemble the Coltateral and make it available to Seller at any convenient place designated by Seller; or (v) sell (including at wholesale) or otherwise dispose of the Coltateral at public or private sale for cash or on credit terms, without notice unless required by law. If notice is required by law, ten (10) days' notice to Buyer shall be deemed reasonable notice. All rights and remedies may be exercised by Seller either separately or in combination and any action taken by Seller to recover payment from Buyer of the Obligations shall not limit Seller's rights with respect to the Collateral. Seller may apply all proceeds of realization of the Collateral to such part or parts of the Obligations as Seller may decide. If there is a deficiency, Buyer will pay the amount of the deficiency upon demand. To the extent permitted by law Buyer waives notice of dishonor, presentment and demand as to this Agreement.

Automatic Payment Plan Enrollment Form				<u> </u>
The undersigned authorizes CNH Capital America LLC Identified below by any means agreed upon by CNH Cocontracts or leases. The undersigned further authorize authorizations by providing CNH Capital written notice, be authorization at any time by written notice.	or any assignee ("CNH Capi apital and the bank, or to with as the bank to take all action out any such cancellation will i	lal") to initiate withdrawals fro hdraw by electronic fund trans ns necessary to effect such t become effective five days afte	m the account designated b fer from said account, sums withdrawals and transfers. T ar CNH Capital receives the l	relow and meintained with the bank I due CNH Capital pursuant to retail The undersigned may cancel these notice. CNH Capital may cancel this
Customer Name (as it appears on the payment notices)				
Address	City		State	Zip
Customer's Bank Name			· · · · · · · · · · · · · · · · · · ·	
Bank Address	City		State	Zip
Customer Account Number prefer to use my checking account. I have enclosed				
Routing #				
I prefer to use my savings account. I have confirmed	with my bank the routing no	umber and my withdrawai sil	p is enclosed.	
Routing#		Account #		
Be sure to date and sign this form.				
Date		Signature		
			,	
Date		Signature		

X Buyer's Initials

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rage 4 of <u>5</u> V7.1

EXHIBIT A
PAGE + OF (a)

Dealer No. 01423	
Credit Application No. 99411-A	
Buyer Name EUGENE ALWINE	

ASSIGNMENT

Dealer (hereinafter "Assignor") hereby assigns all its rights, title and interest in and to the Agreement and the Equipment to CNH Capital America LLC (hereinafter "Assignee"), under terms also described in the Retail Finance Agreement or other documents (collectively hereinafter "Agreement") executed by the Assignor and Assignee.

"Agreement") executed by the Assignor and Assignee.

Assignor warrants and represents as follows: (a) all statements contained in the Agreement, including, but not limited to, the trade-in and down payment information, are true and correct and Assignor did not provide either the trade-in or the down-payment; (b) the Agreement is a valid and binding obligation arising out of a bona-fide obligation in the ordinary course of business and is fully enforceable according to its terms; (c) the collateral is as represented to the Buyer; (d) Assignor made all disclosures required by law, and in the manner required by law prior to Buyer's execution thereof; (e) Buyer is not a minor and has the capacity to contract; (f) Assignor has obtained, or caused to be obtained, a properly perfected first priority security interest (or, in Quebec, a first ranking movable hypothec) in the collateral or has delivered the title, or caused the title to be delivered, to Assignee or noted, or caused to be noted, Assignee's lien on the title to the collateral, whichever applies; (g) as of the date of the Agreement, Assignor has verified that the Buyer has obtained the insurance required by the applicable Agreement and has valid proof of such verification; (h) Assignor has a property completed and signed credit application from the Buyer; (l) the collateral was not delivered to the Buyer until credit approval has been obtained from the Assignee and the Agreement has been property and fully completed by Buyer and Assignor; (l) title to the collateral is vested in the Assignor, free of all liens and encumbrances, and Assignor has the right to assign said title, and any property received in trade for the collateral is free of all liens and encumbrances, and Assignor has the right to assign said title, and any property received in trade for the collateral is free of all liens and encumbrances; (k) the collateral has been paid in full or will be paid in full with Agreement proceeds; (l) Assignor is (and at all times will be) solvent and operatin

Assignor hereby unconditionally agrees to purchase the Agreement from Assignee upon demand for the full amount then unpaid whether the Agreement shall then be, or not be, in default if Buyer or any other person makes a claim against Assignee alleging facts that could constitute a breach of any of the foregoing warranties. Assignor shall assume the defense of such claims and shall indemnify and hold Assignee harmless from all loss, cost and expense arising therefrom. In addition, the Assignment includes the provisions, as outlined in the Dealer Handbook or Retail Finance Agreement, of the box checked below by Assignor which sets forth the Assignor's obligation to Assignee.

The liability of the Assignor, shall not be affected by any extension, renewal, or other change in the time of the payment of the Agreement, nor any change in the manner, place or terms of the payment thereof, nor the releaseof, nor settlement or compromise with any party liable for the payment thereof or the release or non-perfection of any security thereunder. Assignee shall not be bound to exhaust its recourse against Buyer or any other person nor any security Assignee may at any time have, before being entitled to payment from Assignor hereunder. Assignor waives notice of the acceptance of this Assignment and notices of non-payment and non-performance of the Agreement and any other notices required by the law and weives all setoffs and counterclaims. This Assignment shall become effective upon delivery of the Agreement to Assignee or upon Assignee's payment of the purchase price therefor, whichever first occurs.

ENDORSEMENT COL	
PROCE	
X Seller's Reprosentative	CHKIACH S
08-02-2005 Date	METRO TRACTOR, INC. Print Name
ENDORSEMENT COD	ES: N - Non-Recourse; R - Repurchase; F - Full Recourse; O - Other

RETAIL CONTRACT CHECKLIST

	Original signed customer credit application(s)
 	If Customer providing own PDI insurance, proof of customer PDI insurance coverage
	Buyer(s) have signed and initialed completed contract
	Buyer(s) name is exact legal name and physical address
	Dealer has checked and signed applicable endorsement code in assignment section
	Guaranty form for corporations completed, signed and included (if applicable)
	Cross collateralization form completed, signed and included (if applicable)
	Invoice included for allied equipment
· · · · · · · · · · · · · · · · · · ·	Automatic payment plan enrollment form completed, signed and attached with voided customer check or withdrawal slip (if applicable)

THANK YOU FOR YOUR BUSINESS

21004A Rev. 1/05 Previous editions may not be used.

CNH CAPITAL COPY

Page 5 of 5 V7.1

EXHIBIT A
PAGE S OF 6

	Case ∪9-39313-	rld13 Claim 8-1 Fil	ed 11/1	9/09	
FOLLOW INSTRUCTI	NG STATEMENT ONS (front and back) CAREFULLY CONTACT AT FILER [Optional]	9000090707		7003221 8/5/2005 9:35: OR Sec. of Sta	31 AM ate
B. SEND ACKNOWLED Corporat. Suite 370 285 Liber Salem, OF	DGMENT TO: (Name and Address) ion Service Company 0 rty Street R 97301	MZF	ive space is	FOR FILING OFFICE	USE ONLY
		19) - 40110 tabbieviate or combine names			
OR 16. INDIVIDUAL'S LAST	NAME	Financia			
ALWINE		FIRST NAME	MIDD	E NAME	SUFFIX
10. MAILING ADDRESS		EUGENE			
1147 SE 1ST AV	E SUTIE 108	CANBY	STAT	POSTAL CODE	COUNTRY
1d. SEEINSTRUCTIONS	ADD'L INFO RE 16. TYPE OF ORGANIZATION ORGANIZATION DEBTOR	1f. JURISDICTION OF ORGANIZATION		97013 GANIZATIONAL ID#, If ar	USA
2. ADDITIONAL DEBTOR 2a. ORGANIZATIONS NA	R'S EXACT FULL LEGAL NAME - Insert only one	debtor name (2a or 2b) - do not abbreviate or co	mbine names		Non
OR OR INDRESIA					
2b, INDIVIDUAL'S LAST	NAME	FIRST NAME	MIDDL	NAME	SUFFIX
2a. MAILING ADDRESS			ł		SOLLIX
2d SEEINSTRUCTIONS	ADD'L INFO RE 2e. TYPE OF ORGANIZATION	CITY	STATE	POSTAL CODE	COUNTRY
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SECUREDPARTYS			i		******
3a, ORGANIZATION'S NAM	IAME (orname of total assignee of assignor sa	P)-Insertonly <u>one</u> secured party name (3a or 3b)			NONE
CNH CAPITAL A	MERICA LLC				
36. INDIVIDUAL'S LAST NA	ME	FIRST NAME			
		THE TANKE	MIDDLE	NAME	SUFFIX
. MAILING ADDRESS		CITY			1
00 BRUBAKER AVE		NEW HOLLAND	STATE	POSTAL CODE	COUNTRY
This FINANCING STATEMENT	covers the following collateral:		PA	17557	USA
HITACH EX120-3	EVANITA	2564			
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6. ALTERNATIVE DESIGNATION (if applicable): LESSEE/LESSOR CONSTANTS/COURSE	
6. THIS FINANCING STATEMENT IS TO BE USE THE PROPERTY OF THE P	AG, LIEN NON-LICCEUPIG
O COTTONIA EL EN CONTROL DE LA	THOM-DECIFICING
	All Debtors Debtor 1 Debtor 2
OR-Secretary Of State	
FILING OFFICE COPY — UCC FINANCING STATEMENT (FORM UCC1) (REV. 05/22/02)	
SIGNEMENT (FORM UCC1) (REV 05/22/03)	Corporation Service Co-

EXHIBIT A
PAGE 6 OF 6

	ECREDIT RETAIL IN SECU	RITY	AGREEME	NT (Fixed	Rat	٠_١ '	Dealer No. <u>612</u> Fredit Applicat		78204-A
"Bundel" i	egal Name(s), Street Address, City, State, Z								
9-Mile Co	nstruction & Excavation, Inc. 1147 SE 1 Ave, STC 101 R 97013	p coue		Sole Proprietorship		"Seller": (Dealer's WESTERN PO	NER & EQUIP	Address) MENT (CORP.
canby, Of	1 1747 SE 1-HV2, ST 6 108 R 97013		If So, State of I Residence:	of Principal 1745 NE CC PO BOX 113			mbia blvd.		
			General Pa			PORTLAND, OF Multinomah Cou			
			If So, State of 0 Executive Offic		i				
County/Paris	h Clackamas		Corporation						
Social Secu	ity No.	3	If So, State in V Organization It	Vhich Formod: OF	-		*		
The unders	signed Buyer (If more than one, collect	ively calle	d "Buyer") hereb		n Se	aller and Seller he	reby sells to E	Buyer the	e following goods
"Equipmen	(*) at the Time Sale Price and upon the to "EQUIPMENT"	rms set fo	orth herein:	r		4"			
OR USED	(Make and Type)		MODEL	SER	AL N	NUMBER	HOURS	"CA	ASH SALE PRIC
N	Takeuchi Track Loader		TL130	21301629					38,799
	Grouser 7' Plow Blade						- 		
he above Fr	nulument is nuchased for [X] commercial flux	inace use		*New Earlement	c 1101	sed antiomast as	netel		
nit or a den son menute	quipment is purchased for XI commercial but nonstrator for which the manufacturer will s clured in a year prior to the year of purchase	ipply all or	a portion of a new	equipment warrar	ily; th	is Equipment may	TOTAL		38,79
	"TRADE-IN EQUIPMENT"	SE	ERIAL NUMBER	HOURS		GROSS ALLOWANCE (In Dollars)	SECURE DEST DO	D JE	NET TRADE ALLOWANO (in Dollars)
MAKE	TYPE MODEL				├	(In Dollars) N/A	(In Dollar	s) N/A	(in Dollars)
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Lender City State Zip Payoff Good Through: If checked, Seller represents that the above debt has been paid. Buyer hereby conveys to Seller all right, title and interest in the Trade-lequipment free and clear of all encumbrances except as noted above. SUARANTY: The undersigned guarantees the prompt performance of Buyer's Obligations under the Agreement, and all modifications and extensions thereof, including pror payment of all sums when due. The undersigned shall, munediately upon demand, pay any sum due under the Agreement and all modifications and extensions hereof, without sotoff. The undersigned hereby waives notice of any modifications, amendments, or extensions of the Agreement, and of Buyer's nonperformance reach of the Agreement. The payment obligations under this Guaranty are the direct, primary, and contilluding obligations of the undersigned and the undersignelers, successors and assigns, and not merely a guaranty of collection. Capitalized terms used in this Guaranty have the same meaning given to them in the greement. Address: Address:				Lender	Name			ACCI, NO.	
Payoff Good Through: If checked, Seller represents that the above debt has been paid. Buyer hereby conveys to Seller all right, title and interest in the Trade-lequipment free and clear of all encumbrances except as noted above. Suaranty: The undersigned guarantees the prompt performance of Buyer's Obligations under the Agreement, and all modifications and extensions thereof, including prorpagment of all sums when due. The undersigned shall, immediately upon demand, pay any sum due under the Agreement and all modifications and extensions of the Agreement and of Buyer's nonperformance recent of the Agreement, and of Buyer's nonperformance recent of the Agreement, the payment obligations under this Guaranty are the direct, primary, and continuing obligations of the undersigned and the undersigned shall are undersigned and the undersigned and the undersigned and the undersigned and the undersigned shall be undersigned and the undersigned a				Lender	Address			Phone No.	
Payoff Good Through: If checked, Seller represents that the above debt has been paid. Buyer hereby conveys to Seller all right, title and interest in the Trade-lequipment free and clear of all encumbrances except as noted above.				Lender	City	Si	ate		Zip
Buyer hereby conveys to Seller all right, title and Interest in the Trade-Equipment free and clear of all encumbrances except as noted above. BUARANTY: The undersigned guarantees the prompt performance of Buyer's Obligations under the Agreement, and all modifications and extensions thereof, including prorpagment of all sums when due. The undersigned shall, wrunediately upon demand, pay any sum due under the Agreement and all modifications and extensions thereof, without sotoff. The undersigned hereby waives notice of any modifications, amendments, or extensions of the Agreement, and of Buyer's nonperformance reach of the Agreement and all modifications and extensions of the Agreement, and of Buyer's nonperformance reach of the Agreement. The payment obligations under this Guaranty are the direct, primary, and othinking obligations of the undersigned and this undersigne lefts, successors and assigns, and not merely a guaranty of collection. Capitalized terms used in this Guaranty have the same meaning given to them in the Agreement. Superantor Signature: Address:					•				
Buyer hereby conveys to Seller all right, title and Interest in the Trade-Equipment free and clear of all encumbrances except as noted above. BUARANTY: The undersigned guarantees the prompt performance of Buyer's Obligations under the Agreement, and all modifications and extensions thereof, including prorpagment of all sums when due. The undersigned shall, wrunediately upon demand, pay any sum due under the Agreement and all modifications and extensions thereof, without sotoff. The undersigned hereby waives notice of any modifications, amendments, or extensions of the Agreement, and of Buyer's nonperformance reach of the Agreement and all modifications and extensions of the Agreement, and of Buyer's nonperformance reach of the Agreement. The payment obligations under this Guaranty are the direct, primary, and othinking obligations of the undersigned and this undersigne lefts, successors and assigns, and not merely a guaranty of collection. Capitalized terms used in this Guaranty have the same meaning given to them in the Agreement. Superantor Signature: Address:				П.,	hasked Collector	measonts that the	ahaun dal	M bag boon mold	
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The undersigned guarantees the prompt performance of Buyer's Obligations under the Agreement, and all modifications and extensions thereof, including pror payment of all sums when due. The undersigned shall, intrinediately upon demand, pay any sum due under the Agreement and all modifications and extension fereor, without setoff. The undersigned nereby waives notice of any modifications, amendments, or extensions of the Agreement, and of Buyer's nonperformance preach of the Agreement. The payment obligations under this Guaranty are the direct, primary, and continuing obligations of the undersigned and the undersigne elist, successors and assigns, and not merely a guaranty of collection. Capitalized terms used in this Guaranty have the same meaning given to them in the Agreement. Sugrantor Signature: Address:				cqupii	ient nee and ca	ear or all encum	orances	except as noted	a adove.
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rini Name: EUGENE ALWINE City, State, Zip:	Sua	rantor Signature: Eugene T	Seu5	_ /	Address:				
		Name: EUGENE ALWINE		_ (City, State, Zip:				

EXSIBIT B
PAGE D OF 6

CASE CREDIT

Dealer No. 61201

Gredit Application No. 78204-A

Buyer Name 9-Mile Construction & Excavat

ADDITIONAL PROVISIONS

Assignment. Seller will assign this Agreement to Case Credit Corporation ("Assignee"). Buyer acknowledges that Seller has the right to assign this Agreement, that all rights and benefits but no obligations (if any) of Seller under this Agreement may be exercised by Assignee and that no obligations (if any) of Seller pass to Assignee. Upon receipt of notice from Assignee with instructions for payment, Buyer shall make all payments due under this Agreement directly to Assignee. This Agreement shall be binding on and inure to the benefit of Buyer and Seller and their respectivelys, personal representatives, successors or assigns; provided, however, that Buyer may not assign its obligations under this Agreement to any person without Assignee's prior written consent. Notification of Change in Residence, Principal Office, or Organizational Form. If Buyer changes (a) its state of principal residence, or (b) the state in which its chief executive office is located, or (c) the state in which its corporation, limited liability company or fimited partnership is organized, or (d) its form of organization (such as from an individual to a corporation), Buyer will notify Assignee in writing promptly, but in no event more than thirty days after any such change.

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- change.

 Walver of Defenses Against Assignee; Indemnification. Buyer will not assert against Assignee any claim or defense which Buyer may have against Seller or the manufacturer of the Equipment of the Equipment of the Equipment of the Equipment and the list obligation to pay Assignee all amounts under this Agreement is absolute and unconditional without abatement, reduction, set-off, counterclaim or interruption for any representation, warranty or condition with respect to the Equipment or any despute which now or hereafter arises between Buyer and Seller or any other person. Buyer shall indemnify and hold harmless Seller, Assignee and their officers, directors, employees and agents from and against any damage, loss, theft or destruction of the Equipment or any part thereof, and from and against any and all loss, damages, injuries, claims, demands, costs and expenses (Including without Intellation, all defects whether or not discoverable by Buyer, Seller or Assignee or or parent between they and from the Equipment or the Equipment or the Equipment or any part thereof. Buyer shall prompily notify Assignee of any loss, damage, theft, destruction, injury, claim, demand, cost or expense related to this Agreement or the Equipment of which Buyer has notice.
- notice.

 Buyer's Covenants, Buyer shall (i) keep the Equipment in the county of Buyer's address set forth on page 1 of this Agreement and not remove the Equipment from such address, except temporarily in connection with its ordinary use, unless Assignee consents in writing; (ii) maintain the Equipment in good condition and repair and not permit its value to be impaired; (iii) keep the Collateral free of all items, encumbrances and security interests of persons other than Assignee; (iv) defend the Collateral against all claims and legal proceedings by persons other than Assignee; (iv) pay and discharge when due all taxes, fees, levies and other charges upon the Collateral; (iv) pay when due all taxes arising from the purchase of the Equipment under this Agreement, excluding any taxes based upon Seller's net income; (iii) use Equipment sodely in the conduct of Buyer's business; (ivi) ensure Equipment will be used solely within the Intended uses of the manufacturer during the term of this Agreement; (ix) not set, lease or otherwise dispose of the Equipment nor permit the Equipment to become an accession to other goods or a fixture; (iv) on permit the Equipment to be used in volation of any law, regulation or policy of Insurance; and (xt) strictly follow the terms of Provision 1 of this Agreement.

Florish Include executing this Agreement represents and warrants that he or she has the requisite power and authority to enter into this Agreement and execute all related documents, to perform its obligations and consummate the transactions contemplated under this Agreement and related documents and that the execution and delivery of this Agreement and all related documents and the consummation of the transactions under this Agreement have been duly authorized by the Review.

by the Buyer.

Insurance, Buyer shall keep the Equipment and Seller's and its assigns interest in It insured against fire, theft, physical damage and other hazards under policias lishing Assignee as loss payee or as an additional insured, with such provisions, for such amounts (but not less than the unpaid balance outstanding under this Agreement) and by such insurance as shall be satisfactory to Assignee from time and time, and shall furnish to Assignee evidence of such insurance eatisfactory to Assignee such insurance satisfactory to Assignee Buyer's interest in the proceeds of all such insurance or cancellation, lapse or expiration to Assignee. Buyer assigns (and directs any insurer to pay) to Assignee Buyer's interest in the proceeds of all such insurance and any premium refund and Assignee may, at its option, apply such proceeds and refunds to any unpaid balance of the Obligations, whether or not the, and/or to replace requipment, returning any excess to Buyer. Buyer must make all payments due under this Agreement whether or not the Equipment, or cancel be assent after the occurrence of an event of default.

If Buyer purchased physical damage Insurance that is financed under this Agreement, Buyer hereby requests and authorizes. Seller (provided Seller is properly licensed to do so) or Seller's designee; (a) to arrange physical damage insurance for the benefic of seller and Buyer that covers physical damage insurance or the benefic of seller and Buyer that covers physical damage insurance or the temperation of seller and Buyer that covers physical damage insurance or the benefic of seller and Buyer that covers physical damage insurance or the benefic of seller and Buyer that covers physical damage insurance or the benefic of seller and Buyer that covers physical damage insurance or the benefic of seller and Buyer that covers physical damage insurance or the benefic of seller and Buyer that covers physical damage insurance or the benefic of the seller seller for received payment of and execute and endorse an

If Buyer purchased liability insurance that is financed under this Agreement, Buyer hereby requests and authorizes Seller (provided Seller is authorized to do so) or Seller's designee to arrange for the liability insurance to be issued.

- or Seler's designee to arrange for the liability instructe to be issued.

 Modifications and Walvers. This Agreement sets forth the entire understanding between Seller and Buyer, No modification, amendment or extension of this Agreement and no waiver of any provision of this Agreement shall be valid unless in writing and signed by the parties and a waiver of any other prior or subsequent default, except that Buyer authorizes Seller to insert in this Agreement the serial number and/or model number of any Equipment if this information is unknown when this Agreement is exacuted or to correct any errors in such numbers or any other patent errors in the description of the Equipment.
- Authority of Assignee to Perform for Buyer. If Buyer falls to perform any of Buyer's dulies set forth in this Agreement (including, specifically but without limitation, the purchase of insurance), Assignee may, at its option, in Buyer's name or otherwise, take any such action, including, without limitation, signing Buyer's name or paying any amount so required, and all costs and expenses incurred by Seller or Assignee in connection therewith shall form part of the Obligations and shall be payable by Buyer upon demand with interest from the date of payment by Seller or Assignee at the highest rate permitted by law.
- Default. Buyer shall be in default under this Agreement if any of the following occurs:
 - Buyer fails to pay when due any of the Obligations, or to perform any other obligation of Buyer in this Agreement or in any renewal or refinancing of this Agreement:
 - a Bluyer dies, ceases to exist, becomes insolvent or the subject of bankruptcy, Insolvency or liquidation proceedings, attempts to assign this Agreement or alternits to remove, set, transfer, further encumber, part with possession of or subjet any Equipment; any warranty or representation made by Buyer to Induce Seller or Assignee to extend credit to Buyer, under this Agreement or otherwise, is false in any material respect when made or Buyer falls to perform any covenant under this Agreement;
 - (c)

 - Buyer falls to maintain applicable required insurance or fails to comply with the requirements of any such insurance; any other event occurs that causes Seller or Assignee, in good faith, to consider that payment or performance of the Obligations is impaired or that the Equipment is at risk; or

(f) the Equipment is impounded or confiscated by any federal, state or local governmental authority.

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Pege 3 of <u>5</u>

CASE CREDIT COPY

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Case 10-31675-rld13 Doc 23 Filed 01/26/10

安华公司市公司司 华明人中的人工作

CASE	CREDIT

Address PMB 217

Customer's Bank Name

Dealer No. 61201

State OR

Zip 97013

Credit Application No. 78204-A

Buyer Name 9-Mile Construction & Excavat

- 9. Expenses. To the extent not prohibited by law, Buyer shall reimburse Selier or Assignee for any expense incurred by Selier or Assignee in protecting or enforcing their rights under this Agreement, including, without fimitation, reasonable attorneys' fees and legal expenses and all expenses of taking possession, transporting, hoding, repairing, relimbshing, greepaing for disposition and disposing of the Collateral, and all expenses and costs incurred in collecting the Obligations, and all such expenses shall form part of the Obligations.
- 10. Conflict with Law. Any provision of this Agreement prohibited by applicable law shall be ineffective to the extent of the prohibition without invalidating the remaining portions of this Agreement. The validity, construction and enforcement of this Agreement are governed by the laws of the state in which the Seller is located. All terms not otherwise defined have the meanings assigned to them by the Uniform Commercial Code.
- Authorization to Execute and File Financing Statements and Lien Documents. Buyer hereby authorizes Seller or Seller's designee to execute and file
 financing statements, and any motor vehicle title, registration and lien notification documentation, and any amendments thereto on behalf and in the name of
 Buyer to evidence Seller's security interest in the Collateral.
- 12. Time Price Calculations, If this Is a variable rate contract, the Prime Rate for a given calendar month shall be the rate designated as the "Prime Rate" as published in The Well Street Journal on the twentleth day of the prior calendar month for on the next day published if not published on the twentleth day. If The Well Street Journal cases expublication permanently or no longer publishes a "Prime Rate" be Prime Rate shall mean the prime loan rate of any Identity chartered bank selected by Assignes. The payments, including Time Price Differential Rete (APR) in effect at the commencement of this Agreement and Indicated herein. The India payment shall be recalculated to reflect increases/decreases in the Prime Rate during the remaining term. The Time Price Differential Rate (APR) shall never be less than 0%.
 - For all contracts, the Time Price Differential Rate (APR) shall be calculated for the actual number of days elapsed, using a daily rate determined by dividing the annual rate by 365. Buyer shall make all payments in fawful money of the United States of America.
- annual rate by sobs. Duyer shall make au payments in lawful motory of the United States of America.

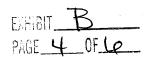
 3. Remedies upon Default. Upon the occurrence of any event of default, Seller shall have all rights and remedies provided by the Uniform Commercial Code or any other applicable law and Seller may, at its option; (i) declare all Obligations immediately due and payable (excluding the unearned Time Price Differential) without notice or demand, nor any water of Intent to accelerate or notice of acceleration; (ii) ke possession of the Collateral, without notice or hearing, and, where permitted by law, Buyer expressly waives any right to notice or a prior hearing; (ii) ender the Equipment unusable, (iv) require Buyer to assemble the Collateral and make it available to Seller at any convenient place designated by Seller, or (v) sell (including at wholesale) or otherwise dispose of the Collateral at public or private sele for cash or on credit terms, without notice unless required by law, if notice is required by law, ten (10) days' notice to Buyer shall be deemed reasonable notice. All rights and remedies may be exercised by Seller either separately or in complaination and any action taken by Seller to accover payment from Buyer of the Obligations shall not limit Seller's rights with respect to the Collateral. Seller may apply all proceeds of realization of the Collateral to such part or parts of the Obligations as Seller may decide. If there is a deficiency, Quyer with any the amount of the deficiency upon demand. To the extent permitted by law Buyer waives notice of dishonor, presentment and demand as to this Agreement.

The undersigned authorses Case Credit Corporation or any assignes ("Case Credit"), to initiate withdrawals from the account designated below and maintained with the bank identified below by any means agreed upon by Case Credit and the bank, or to withdraw by electronic fund transfer from said account, sums due Case Credit pursuant to retail confactor to leases. The undersigned further entityorizes the bank to take all editions necessary to effect, whichevers and transfers. The undersigned may cancel those confactor to leases. The undersigned further authorizes the bank to take all editions necessary to effect, whichevers and transfers. The undersigned into any cancel those

City canby

Customer Name (as it appears on the payment notices) 9-Mile Construction & Excavation, Inc.

Bank Address	City	State	Zip
Customer Account Number			
I prefer to use my checking account. I have enclosed a volde	ed check.		
Routing #		t#	
I prefer to use my savings account. I have confirmed with my	bank the routing number and my with	drawal slip is enclosed.	
Routing #	Account	#	
Be sure to date and sign this form.			
Date _11-30-2004	Signatur	ıa.	
Date	Orginala:	9-Mile Construction & Excava	illon, Inc.
Date	Signatur	18	
			•
X Buyer's Initials .			
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CASE	CREDI	T

Dealer No. 6	1201	
Credit Applic	ation No. 78204-A	
	9-Mile Construction	& Excavat

ASSIGNMENT

Dealer (hereinafter "Assignor") hereby assigns all its rights, title and interest in and to the Agreement and the Equipment to Case Credit Corporation (hereinafter "Assignee"), under terms also described in the Retail Finance Agreement or other documents (collectively hereinafter "Agreement") executed by the Assignor and Assignee.

Assignor breiby unconditionally agrees to purchase the Agreement from Assignee upon demand for the full amount then unpald whether the Agreement shall then be, or not be, in default if Buyer or any other person makes a claim against Assignee alleging facts that could constitute a breach of any of the foregoing warranties. Assignor shall assume the defense of such claims and shall indemnify and hold Assignee harmless from all loss, cost and expense arising therefrom. In addition, the Assignment Includes the provisions, as outlined in the Dealer Handbook or Retail Finance Agreement, of the box checked below by Assignor which sets forth the Assignors obligation to Assignee.

The liability of the Assignor, shall not be affected by any extension, renewal, or other change in the time of the payment of the Agreement, nor any change in the manner, place or terms of the payment thereof, nor the release of, nor settlement or compromise with any party liable for the payment thareof or the release or non-perfection of any security thereunder. Assignee shall not be bound to exhaust its recourse against Buyer or any other person nor any security Assignee may at any time have, before being entitled to payment from Assignor hereunder. Assignor waives notice of the acceptance of this Assignment and notices of non-payment and non-performance of the Agreement and any other notices required by the law and werkes all sectors and counterclaims. This Assignment shall become effective upon delivery of the Agreement to Assignee or upon Assignee's payment of the purchase price therefor, whichever first occurs.

ENDORSEMENT COS OTHER ENDORSEME	DES N. OR OF INTEXPLANATION	□ 。
PROCE DIST.	EDS WHLS (excludes payoffs) CHK/ACH	\$
Seller's Representative		
11-30-2004	WESTERN POWER & EQUIPMENT CORP.	
Date	Print Name	
ENDORSEMENT COD	ES: N - Non-Recourse; R - Repurchase; F - F	ull Recourse; O - Other

RETAIL CONTRACT CHECKLIST

 Original signed customer credit application(s)
 If Customer providing own PDI insurance, proof of customer PDI insurance coverage
 Buyer(s) have signed and initiated completed contract
 Buyer(s) name is exact legal name and physical address
 Photocopy of buyer(s) valid drivers license or passport or completed, signed applicant name and address verification form attached
 Dealer has checked and signed applicable endorsement code in assignment section
 Guaranty form for corporations completed, signed and included (if applicable)
 Cross collateralization form completed, signed and included (if applicable)
 Invoice Included for allied equipment
 Automatic payment plan enrollment form completed, signed and attached with volded customer check or withdrawal slip (if applicable)

THANK YOU FOR YOUR BUSINESS

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Page 6 of 5

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EXHIBIT B PAGE 5 OF 6

UCC FINANCING	STATEMENT S (front and back) CAREFUL	TA	900452210	5	12/	3768000 9/2004 3:0 Sec. of S	
A. NAME & PHONE OF C	ONTACTAT FILER [optional] MENT TO: (Name and Addr on Service Company y Street	ess) TL		THE ABOVE SPA	CE IS FO	R FILING OFFICE US	SE ONLY
1.DEBTOR'S EXACTFU	LLLEGAL NAME-Insertonlyon	edebtorname (1a or 1b) -	do notabbreviale or combine				
1a. ORGANIZATION'S NA							
OR 15 INDIVIDUAL'SLASTN	RUCTION & EXCAVAT	ION INC	FIRST NAME		MODLE	VAME	SUFFIX
1c, MAILING ADDRESS			CITY		STATE	POSTAL CODE	COUNTRY
SE 1ST AVE STE			CANBY		OR	97013	USA
1d. SEEINSTRUCTIONS	ADD'L INFO RE ORGANIZATION CORP	ORGANIZATION	11. JURISDICTION OF OR OR	GANIZATION	1g, ORG/	NIZATIONAL IO #, if any 13-97	NONE
2, ADDITIONAL DEBTOR	S'S EXACT FULL LEGAL NA	ME - insert only <u>one</u> del	btor name (2a or 2b) - do no	ot abbreviate or combine o	ames .		
2a. ORGANIZATION'S NA	ME		• _			•	
OR 26, INDIVIDUAL'S LAST I	NAME		FIRST NAME		MIDOLE	NAME	SUFFIX
2c, MAILING ADDRESS	A 2		CITY		STATE	POSTAL CODE	COUNTRY
2d. <u>SEE INSTRUCTIONS</u>	ADD'L INFO RE 2e. TYPE OF ORGANIZATION DEBTOR	FORGANIZATION	2f, JURISDICTION OF OR	GANIZATION	2g. ORG/	 INIZATIONAL ID #, If any	NONE
3. SECURED PARTY'S	NAME (or NAME of TOTAL ASSIG	NEE of ASSIGNORS/P)	insert only one secured par	lyname (3a or 3b)			
Sa, ORGANIZATION'S NA		.0204710					
OR Sb. INDIVIDUAL'S LAST N	CORPORATION ID#76	UJJ411V	FIRSTNAME	The section of the se	MIDOLE	VAME	SUFFIX
3c. MAILING ADDRESS			CITY		STATE	POSTAL CODE	COUNTRY
P.O. BOX 292			RACINE		MI	53401	USA

5. ALTERNATIVE DESIGNATION [if applicable]: LESSEF/LESSOR CONSIGNEE/CONSIGNOR BAILEE/BAILOR SELLER/BUYE		N NON-UCCFILING
6. This FWANCING STATEMENT is to be filed for record) (or recorded) in the REAL. 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) ESTATE RECORDS. Affacts Addendum if specification in the REAL (ADDITIONAL FEE) (optional)	All Debtors	Debtor 1 Debtor 2
8. OPTIONAL FILER REFERENCE DATA 06814309226120100201		
OR-Secretary Of State		
	Corporation	Service Company

21301629

FILING OFFICE COPY — UCC FINANCING STATEMENT (FORM UCC1) (REV. 05/22/02)

TAKEUC TL130 LOADER

Corporation Service Company 2711 Centerville Rd, Ste. 400 Wilmington, DE 19808

CNH Capital RETAIL INSTALLMENT SALE CONTRACT

Dealer No. 61201

	•	AND SECURITY Fixed)		=NT	Credit Applicati	on No. 7	9153-A
"Buyer(s)" Legal Name(s), Street Address, City, State, Zip Code 9-Mile Construction & Excavation, Inc. 1147 SE 1st, Ste 108 Canby,OR 97013		Code Individual/S If So, State of P Residenco: General Pa	Western Power & 1745 NE Columbia PO Box 11206 Portland, OR 9721 Without County		ver & Equipment C umbia Bivd. 16 97211	i 17211	
Social Secu or Texpayer	ID No.	Organization ID	o:				
"Equipmen	signed Buyer (if more than one, collective it") at the Time Sale Price and upon the term	ely called "Buyer") hereby ns set forth herein:	purchases from	n Seller and Seller	hereby sells to E	luyer the	following goods (the
NEW* OR USED	"EQUIPMENT" (Make and Type)	MODEL	SERI	SERIAL NUMBER		"CA	SH SALE PRICE"
N	Takeuchi Excavator	TB145	14514744				55,200.00
unit or a de unit or a de	quipment is purchased for commercial/busin monstrator for which the manufacturer will sup- actured in a year prior to the year of purchase	ess use () agricultural use, bly all or a portion of a new	"New Equipment is equipment warran	s unused equipment, ly, this Equipment m	a rental lay have TOTAL		55,200.00
MAKE	"TRADE-IN EQUIPMENT" TYPE MODEL	SERIAL NUMBER	HOURS	GROSS ALLOWANCE (In Dollars)	(in Dollars	JE i)	NET TRADE-IN ALLOWANCE (In Dollars)
 				N/	'A	N/A	N/A
PREPAYM balance her will not cha	tes do not allow these limitations and estate law. ENTS. Buyer may make a partial prepay reunder (the "Time Balance") at any lime, to nige or defer Buyer's next scheduled paym. Time Balance on construction equipment	ment of the unpaid time out any partial prepaymen ents. If Buyer prepays the	BUYER RE	PRESENTS THA FOR FAMILY, HO	AT THE EQUIP	PMENT	IS NOT BEING
use, Buyer prohibited b	shall pay a prepayment fee of up to \$ y applicable law. RGES/DEFAULT RATE/RETURNED CH	150, unless such fee is	1. DO NOT SIGN THIS BEFORE YOU READ THE WRITING ON THE ADDITIONAL PAGES, EVEN IF OTHERWISE ADVISED.				
late charge permitted by maturity (by	on each payment more than 10 days past of applicable law. Buyer shall pay interest or acceleration or otherwise) at the highest ra	due at the highest amoun In the unpaid balance after to permitted by applicable	3. YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN.				
returned che	ick is returned for any reason, Seller or Assi ack processing fee as established by Seller exceed the maximum permitted under applica-	or Assignee from time to	PARTIES ON	I THE ADDITION	AL PAGES OF	THIS AC	ID DUTIES OF THE GREEMENT ARE A T BE SIGNED, AND
refinances a	NS AND REFINANCING. If Seller or Ass my payments due under this Agreement, S crease the Time Price Differential Rate.		I agree to the		eceived and examin	ed the E	quipment, which is in knowledge receipt of
security inte	INTEREST AND COLLATERAL. Buyer erest in the Equipment, and in all in belonging to the Equipment, and all sut oceeds (such as insurance proceeds) and	nprovements, parts and estitutions, replacements,	the terms of th	is Agreement.	to purchase the E	quípmen	it described above on
the Equipme as the "Colla obligations agreement i affiliate of A	ent (the Equipment and such items are coll ateral"), to secure payment and performance of Buyer under this agreement (the "Ac between Buyer and Seller, between Buye ussignee (the "Obligations"). Loss of or de-	ectively referred to herein e of all existing and future preement") or any other er and Assignee or any	Buyer/Buyer's R 03-07-2006 Date P	epresentative 9-Mile Construction fint Name	on & Excavation, I	nc.	Tille (if applicable)
shall not release Buyer from any of the obligations. Upon request, Buyer shall take any action reasonably deemed necessary by Seller to protect and enforce Seller's interest in the Collateral or rights under this Agreement. Seller is authorized to examine the Collateral wherever located at any reasonable time or times. Buyer authorizes Seller to insert in this Agreement, or amend any financing statement or title registration documentation to reflect, the serial and/or model numbers of the Equipment if unknown at the time this			Date Print Name X PUP				
Agreement is	s executed and to correct any errors in suc description of the Equipment.		Western Power & I	Equipment Corp			

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Dealer No. 61201

CNH Capital

			Credit An	plication No. 7	9153-A		
			Buver Na	nie 9-Mile Cons	truction	n & Excavation, I	nc.
			,				
	STATEMENT OF TRANSACTION	Buyer	agrees to pay dance with the t	to the order of	of Seller	r the Time Bala	nce (line item 7) i
1	Cash Sale Price 1. \$ 55,200.00	.					
2	Cash Down Payment \$ <u>8,400.00</u>		NO. OF	PERIOD OF		MOUNT OF	BEGINNING
	Net Trade-in Allowance \$ N/A		PAYMENTS	PAYMENTS	EAC	HPAYMENT	MM/DD/YYYY
	Manufacturer's Rebate \$ N/A		59	1 Month	\$	954.54	04/20/2006
	Total Down Payment 2. \$8,400.00	.]	1	1 Month	\$.	954.09	03/20/2011
3.	Unpaid Balance of Cash Sale Price (1 minus 2) 3 \$ 46,800.00				\$		
4.	Other Charges				\$		
	(a) Taxes (Not in Cash Price) \$ N/A	l			\$		
	(b) Official Fees \$ 10.00]			\$		
	(c) UCC Filing Service Fee \$ 12.50				\$		
	(d) Administrative Fee \$ 227.50				\$		
	(e) Physical Damage Insurance \$ N/A				\$		
	(f) Credit Life Insurance 3 N/A	}			\$		
	(g) Credit Accident & Health Insurance \$ N/A	l			\$		
	(h) Liebility Insurance \$ N/A				\$		
	(i) Manufacturer's Extended Warranty Plan \$ N/A				\$		
	(j) Extended Service Protection Plan \$ N/A			•	\$		
	(k) (Other) \$ N/A				\$		
,	Total Other Charges 4 \$ 250.00				\$		
c	1 4				s		
	Unpaid Balance (Amount Financed) (3+4) 5, \$ 47,050.00 Time Price Differential (Finance Charge) 6, \$ 10,221.95				s		****
					\$		
					\$		
	., .				\$		
9.	The Unpaid Balance hereof shall bear Finance Charges computed at a per annum	'			Ψ		
	rate (the "Turne Price Differential Rate" or "APR") equal to	ŀ					
	FIXED RATE contract). Pate APR henins accruing: 03-07-2006						N/A
D.	Date APR begins accruing: 03-07-2006 Mo Day Yr			Due"is \$			IN/
		The se	cured debt on the	Trade-in Equipm	ent is ov	ved to:	
							ē
		Lender	Name	······		Acct. No	·
	•						
		Lender	Address	·····		Phone No _	
		Lender	City	81	ale		Zip
			•		110		Σiβ
	•	Payoff (Good Through:				
		LJ (Fc	hecked, Seller re	presents that the a	above de	ebt has been paid.	
		Buyer	hereby convey	s to Seller all	right, t	itle and interest	in the Trade-in above.
		Eduibii	ient nee and ca	ear or an encum	rances	except as noted	above.
							·····
	ARANTY:						
he	undersigned guarantees the prompt performance of Buyer's Obligations un- ment of all sums when due. The undersigned shall, immediately upon demices of, without setoff. The undersigned hereby waives notice of any modification- ich of the Agreement. The payment obligations under this Guaranty are the dispersions and assigns, and not merely a guaranty of collection. Capital	ter the A	greement, and	all modifications	and e	xtensions thereo	f, including prompt
ier	eof, without setoff. The undersigned hereby waives notice of any modification	s, amend	ments, or exten	sions of the Agr	eemeni	, and of Buyer's	ns and extensions nonperformance or
rea ein	ich of the Agreement. The payment obligations under this Guaranty are the d	rect, prin	nary, and contin	uing obligations	of the	undersigned and	the undersigned's
gre	gement.	incou toti	no acca na trac	o Charanty Have	, 410 31	and meaning gr	ACIT TO THOSE ITT THE
	Lange ST Age						
ua	rantor Signature: Cugun Ilu	_ <i>f</i>	ddress:				
	V Firgeno T Abrino						
ınt	Name; Eugene T Alwine	_ (ity, State, Zlp:				
•	e. 1						
é							

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Dealer No. 61201	
Credit Application No. 79153-A	
Buyer Name 9-Mile Construction & Excavation, Inc.	

ADDITIONAL PROVISIONS

- Assignment. Seller will assign this Agreement to CNH Capital America LLC (hereinafter "Assignee"). Buyer acknowledges that Seller has the right to assign this Agreement, that all rights and benefits but no obligations (if any) of Seller under this Agreement may be exercised by Assignee and that no obligations (if any) of Seller pass to Assignee. Upon receipt of notice from Assignee with instructions for payment, Buyer shall make all payments due under this Agreement directly to Assignee. This Agreement shall be binding on and inture to the benefit of Buyer and Seller and their respective heirs, personal representatives, successors or assigns; provided, however, that Buyer may not assign its obligations under this Agreement to any person without Assignee's prior written
- Notification of Change in Residence, Principal Office, or Organizational Form. If Buyer changes (a) its state of principal residence, or (b) the state in which its chief executive office is located, or (c) the state in which its corporation, limited liability company or limited partnership is organized, or (d) its form of organization (such as from an individual to a corporation), Buyer will notify Assignee in writing promptly, but in no event more than thirty days after any such
- Waiver of Defenses Against Assignee; Indemnification. Buyer will not assert against Assignee any claim or defense which Buyer may have against Seller or the manufacturer of the Equipment. Buyer agrees that its obligation to remit payments will not be subject to, and it will not make any claim against Assignee for breach of any representation, warranty or condition with respect to the Equipment and that its obligation to pay Assignee all amounts under this Agreement is absolute and unconditional without abatement, reduction, set-off, counterclaim or interruption for any reason whatsoever, notwithstanding any breach or alleged breach of any representation, warranty or condition with respect to the Equipment or any dispute which now or hereafter arises between Buyer and Seller or any other person. Buyer shall indemnify and hold harmless Seller, Assignee and their officers, directors, employees and agents from and against any damage, loss, theft or destruction of the Equipment or any part thereof, and from and against any and all loss, damages, injuries, claims, demands, costs and expenses (including without limitation reasonable attorneys' fees and expenses) of any kind and nature, arising out of or connected with the use, condition (including without limitation, all defects whether or not discoverable by Buyer, Seller or Assignee) or operation of the Equipment or any part thereof. Buyer shall promptly notice.
- Buyer's Covenants. Buyer shall (i) keep the Equipment in the county of Buyer's address set forth on page 1 of this Agreement and not remove the Equipment from such address, except temporarily in connection with its ordinary use, unless Assignee consents in writing; (ii) maintain the Equipment in good condition and repair and not permit its value to be impaired; (iii) keep the Collateral free of all liens, encumbrances and security interests of persons other than Assignee; (iv) defend the Collateral against all claims and legal proceedings by persons other than Assignee; (v) pay and discharge when due all taxes, fees, levies and other charges upon the Collateral; (vi) pay when due all taxes arising from the purchase of the Equipment under this Agreement, excluding any taxes based upon Seller's net income, (vii) use Equipment solely in the conduct of Buyer's business; (viii) ensure Equipment will be used solely within the intended uses of the manufacturer during the term of this Agreement; (ix) not sell, lease or otherwise dispose of the Equipment nor permit the Equipment to be used in violation of any law, regulation or policy of insurance; and (xi) strictly follow the terms of Provision 1 of this Agreement.

Each individual executing this Agreement represents and warrants that he or she has the requisite power and authority to enter into this Agreement and execute all related documents, to perform its obligations and consummate the transactions contemplated under this Agreement and related documents and that the execution and delivery of this Agreement and all related documents and the consummation of the transactions under this Agreement have been duly authorized

Insurance. Buyer shall keep the Equipment and Seller's and its assigns interest in it insured against fire, theft, physical damage and other hazards under policies listing Assignee as loss payee or as an additional insured, with such provisions, for such amounts (but not less than the unpaid balance outstanding under this Agreement) and by such insurers as shall be satisfactory to Assignee from time and time, and shall furnish to Assignee evidence of such insurance satisfactory to Assignee Such insurance shall provide at least 30 days written notice of cancellation, lapse or expiration to Assignee. Buyer assigns (and directs any insurer to pay) to Assignee Buyer's interest in the proceeds of all such insurance and any premium refund and Assignee may, at its option, apply such proceeds and refunds to any unpaid balance of the Obligations, whether or not due, and/or to repair or restore the Equipment, returning any excess to Buyer. Buyer must make all payments due under this Agreement whether or not the Equipment is insured or underinsured. Assignee is authorized, in the name of Buyer or otherwise, to make, adjust and/or settle claims under any insurance on the Equipment, or cancel the same after the occurrence of an event of default.

If Buyer purchased physical damage insurance that is financed under this Agreement, Buyer hereby requests and authorizes Seller (provided Seller is properly licensed to do so) or Seller's designee; (a) to arrange physical damage insurance for the benefit of Seller and Buyer that covers physical damage to the Equipment, (b) to replace or otherwise modify such insurance as Seller deems appropriate and (c) to be Buyer's attorney-in-fact to make claim for, receive payment of and execute and endorse and negotiate all documents, checks or drafts received in payment of loss or damage under the insurance. This Agreement and hereby incorporates by reference any Insurance and Evended Service Plan Addendum signed in connection with this Agreement.

STATEMENT TO BUYER: THE PHYSICAL DAMAGE INSURANCE PURCHASED UNDER THE TERMS OF THIS AGREEMENT COVERS ONLY LOSS OF OR DAMAGE TO THE EQUIPMENT, LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED AS PART OF THE PHYSICAL DAMAGE INSURANCE, BUYER UNDERSTANDS THAT IF INSURANCE IS FINANCED UNDER THIS AGREEMENT, PRE-PAYMENT OF BUYER'S OBLIGATIONS OR TERMINATION OF THIS AGREEMENT MAY RESULT IN LOSS OF INSURANCE

If Buyer purchased liability insurance that is financed under this Agreement, Buyer hereby requests and authorizes Seller (provided Seller is authorized to do so) or Seller's designee to arrange for the liability insurance to be issued.

- Modifications and Waivers. This Agreement sets forth the entire understanding between Seller and Buyer. No modification, amendment or extension of this Agreement and no waiver of any provision of this Agreement shall be valid unless in writing and signed by the parties and a waiver of any default hereunder by Seller shall not constitute a waiver of any other prior or subsequent default, except that Buyer authorizes Seller to insert in this Agreement the serial number and/or model number of any Equipment If this information is unknown when this Agreement is executed or to correct any errors in such numbers or any other patent errors in the description of the Equipment.
- Authority of Assignee to Perform for Buyer If Buyer fails to perform any of Buyer's duties set forth in this Agreement (Including, specifically but without limitation, the purchase of insurance), Assignee may, at its option, in Buyer's name or otherwise, take any such action, including, without limitation, signing Buyer's name or paying any amount so required, and all costs and expenses incurred by Seller or Assignee in connection therewith shall form part of the Obligations and shall be payable by Buyer upon demand with Interest from the date of payment by Seller or Assignee at the highest rate permitted by law.

Default. Buyer shall be in default under this Agreement if any of the following occurs:

- Buyer falls to pay when due any of the Obilgations, or to perform any other obligation of Buyer in this Agreement or in any renewal or refinancing of this Agreement; (a)
- a Buyer dies, ceases to exist, becomes insolvent or the subject of bankruptcy, insolvency or liquidation proceedings, attempts to assign this Agreement or attempts to remove, sell, transfer, further encumber, part with possession of or subjet any Equipment; any warranty or representation made by Buyer to Induce Seller or Assignee to extend credit to Buyer, under this Agreement or otherwise, is false in any material respect when made or Buyer fails to perform any covenant under this Agreement; Buyer fails to maintain applicable required insurance or fails to comply with the requirements of any such insurance; (b) (c)

any other event occurs that causes Seller or Assignee, in good faith, to consider that payment or performance of the Obligations is impaired or that the Equipment is at risk; or (e)

the Equipment is impounded or confiscated by any federal, state or local governmental authority.



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Dealer No. 61201
Credit Application No. 79153-A
Buyer Name 9-Mile Construction & Excavation, Inc.

- 9. Expenses. To the extent not prohibited by law, Buyer shall reimburse Seller or Assignee for any expense incurred by Seller or Assignee in protecting or enforcing their rights under this Agreement, including, without limitation, reasonable altorneys' fees and legal expenses and all expenses of taking possession, transporting, holding, repairing, refurbishing, preparing for disposition and disposing of the Collateral, and all expenses and costs incurred in collecting the Obligations, and all such expenses shall form part of the Obligations.
- 10. Conflict with Law. Any provision of this Agreement prohibited by applicable law shall be ineffective to the extent of the prohibition without invalidating the remaining portions of this Agreement. The validity, construction and enforcement of this Agreement are governed by the laws of the state in which the Seller is located. All terms not otherwise defined have the meanings assigned to them by the Uniform Commercial Code.
- 11. Authorization to Execute and File Financing Statements and Lien Documents. Buyer hereby authorizes Seller or Seller's designee to execute and file financing statements, and any motor vehicle title, registration and lien notification documentation, and any amendments thereto on behalf and in the name of Buyer to evidence Seller's security interest in the Collateral.
- 12. Time Price Calculations. If this is a variable rate contract, the Prime Rate for a given calendar month shall be the rate designated as the "Prime Rate" as published in The Wall Street Journal on the twentieth day of the prior calendar month (or on the next day published if not published on the twentieth day). If The Wall Street Journal ceases publication permanently or no longer publishes a "Prime Rate", the Prime Rate shall mean the prime foan rate of any federally chartered bank selected by Assignee. The payments, including Time Price Differential (Finance Charge) Indicated herein, have been calculated using the Time Price Differential Rate (APR) in effect at the commencement of this Agreement and indicated herein. The final payment shall be recalculated to reflect increases/decreases in the Prime Rate during the remaining term. The Time Price Differential Rate (APR) shall never be less than 0%.

For all contracts, the Time Price Differential Rate (APR) shall be calculated for the actual number of days elapsed, using a daily rate determined by dividing the annual rate by 365. Buyer shall make all payments in lawful money of the United States of America.

13. Remedies upon Default. Upon the occurrence of any event of default, Seller shall have all rights and remedies provided by the Uniform Commercial Code or any other applicable law and Seller may, at its option: (i) declare all Obligations immediately due and payable (excluding the unearned Time Price Differential) without notice or demand, nor any waiver of intent to accelerate or notice of acceleration; (ii) take possession of the Collateral, without notice or hearing, and, where permitted by law, Buyer expressly waives any right to notice or a prior hearing; (iii) render the Equipment unusable; (iv) require Buyer to assemble the Collateral and make it available to Seller at any convenient place designated by Seller; or (v) sell (including at wholesale) or otherwise dispose of the Collateral at public or private sale for cash or on credit terms, without notice unless required by law, If notice is required by law, ten (10) days' notice to Buyer shall be deemed reasonable notice. All rights and remedies may be exercised by Seller either separately or in combination and any action taken by Seller to recover payment from Buyer of the Obligations shall not limit Seller's rights with respect to the Collateral. Seller may apply all proceeds of realization of the Collateral to such part or parts of the Obligations as Seller may decide. If there is a deficiency, Buyer will pay the amount of the deficiency upon demand. To the extent permitted by law Buyer waives notice of dishonor, presentment and demand as to this Agreement.

Automatic Payment Plan Emplinent Point				
The undersigned authorizes CNH Capital America LLC identified below by any means agreed upon by CNH Ca contracts or leases. The undersigned further authorize authorizations by providing CNH Capital written notice, b authorization at any time by written notice.				
Customer Name (as it appears on the payment notices)		•		
Address	City	State	Zip	
Customer's Bank Name			•	
Bank Address	City	State	Zig	
Customer Account Number				
l prefer to use my checking account. I have enclosed	a volded check.			
Routing #		Account #		
I prefer to use my savings account. I have confirmed	with my bank the routing num	ber and my withdrawal slip is enclosed	1.	
Routing #		Account #		
Be sure to date and sign this form		7,000,1(1)		
•	•			
Date		Signature		
		Olgitatul G	***************************************	
Date		ar .		
		Signature		

X EAD Buyer's Initials

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Dealer No. 61201	
Credit Application No. 79153-A	
Buyer Name 9-Mile Construction & Excavation, Inc.	

ASSIGNMENT

Dealer (hereinafter "Assignor") hereby assigns all its rights, title and interest in and to the Agreement and the Equipment to CNH Capital America LLC (hereinafter "Assignee"), under terms also described in the Retail Finance Agreement or other documents (collectively hereinafter "Agreement") executed by the Assignor and Assignee

"Agreement") executed by the Assignor and Assignee

Assignor warrants and represents as follows: (a) all statements contained in the Agreement, including, but not limited to, the trade-in and down payment information, are true and correct and Assignor did not provide either the trade-in or the down-payment; (b) the Agreement is a valid and binding obligation arising out of a bona-fide obligation in the ordinary course of business and is fully enforceable according to its terms; (c) the collateral is as represented to the Buyer; (d) Assignor made all disclosures required by law, and in the manner required by law prior to Buyer's execution thereof; (e) Buyer is not a minor and has the capacity to contract; (f) Assignor has obtained, or caused to be obtained, a properly perfected first priority security interest (or, in Quebec, a first ranking movable hypothec) in the collateral or has delivered the title, or caused the title to be delivered, to Assignee or noted, or caused to be noted, Assignee's lien on the title to the collateral, whichever applies; (g) as of the date of the Agreement, Assignor has verified that the Buyer has obtained the insurance required by the applicable Agreement and has valid proof of such verification; (h) Assignor has a property completed and signed credit application from the Buyer; (i) the collateral was not delivered to the Buyer until credit approval has been obtained from the Assignee and the Agreement has been properly and fully completed by Buyer and Assignor; (j) title to the collateral is vested in the Assignor here of all liens and encumbrances; (k) the collateral has been paid in full or will be paid in full with Agreement proceeds; (l) Assignor is (and at all times will be) solvent and operating in the ordinary course of business; (m) the Agreement is not subject to any defense, counterclaim or setoff (or compensation in Quebec), except to the extent enforceability may be limited by bankruptcy, receivership, Insolvency or moratorium laws, or by other similar laws of general

Assignor hereby unconditionally agrees to purchase the Agreement from Assignee upon demand for the full amount then unpaid whether the Agreement shall then be, or not be, in default if Buyer or any other person makes a claim against Assignee alleging facts that could constitute a breach of any of the foregoing warrantles. Assignor shall assume the defense of such claims and shall indomnify and hold Assignee harmless from all loss, cost and expense ansung therefrom. In addition, the Assignment includes the provisions, as outlined in the Dealer Handbook or Retail Finance Agreement, of the box checked below by Assignor which sets forth the Assignor's obligation to Assignee.

The liability of the Assignor, shall not be affected by any extension, renewal, or other change in the time of the payment of the Agreement, nor any change in the manner, place or terms of the payment thereof, nor the releaseof, nor settlement or compromise with any party liable for the payment thereof or the release or non-perfection of any security thereunder. Assignee shall not be bound to exhaust its recourse against Buyer or any other person nor any security Assignee may at any time have, before being entitled to payment from Assignor hereunder. Assignor waives notice of the acceptance of this Assignment and notices of non-performance of the Agreement and any other notices required by the law and waives all setoffs and counterclaims. This Assignment shall become effective upon delivery of the Agreement to Assignee's payment of the purchase price therefor, whichever first occurs.

ENDORSEMENT C	ODES N R C	F O
PROD DIST.	CEEDS WHLS (excludes payoffs) CHK/ACH	\$
Seller's Representative		
03-07-2006	Western Power & Equipment Corp	
Date	Print Name	
ENDORSEMENT CO	DDES: N - Non-Recourse; R - Repurchase;	F - Full Recourse; O - Other

RETAIL CONTRACT CHECKLIST

 Original signed customer credit application(s)
 If Customer providing own PDI insurance, proof of customer PDI insurance coverage
 Buyer(s) have signed and initialed completed contract
 Buyer(s) name is exact legal name and physical address
 Dealer has checked and signed applicable endorsement code in assignment section
 Guaranty form for corporations completed, signed and included (if applicable)
 Cross collateralization form completed, signed and included (if applicable)
 Invoice included for allied equipment
Automatic payment plan enrollment form completed, signed and attached with voided customer check or withdrawal slip (if applicable)

THANK YOU FOR YOUR BUSINESS

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EXPUBIT C PAGE S OF LO

UCC FINANCING	IS (front and back	CAREFULLY		9000573407	3/10	4213 6/2006 2:37:01 Sec. of State	1 PM
A. NAME & PHONE OF C	CONTACT AT FILE	R [optional]			•		•
Suite 370	on Service		TL	w	٠.		
		923409-1		THE ABOVE S	SPACE IS FO	R FILING OFFICE US	SE ONLY
		insertonly <u>one</u> debtorname	(1a or 1b) - c	do notabbreviate or combine names			
1a. ORGANIZATION'S N		AVONUNTION					
OR 15 INDIVIDUAL SLASTI		ENCAVALION		FIRST NAME	MIDDLE	NAME	SUFFIX
1c. MAILING ADDRESS				CITY	STATE	POSTAL CODE	COUNTRY
1147 SE 1ST, S				CANBY	OR	97013	USA
1d. SEE INSTRUCTIONS	ADD'L INFO RE ORGANIZATION	1e. TYPE OF ORGANIZA	TION	1f. JURISDICTION OF ORGANIZATION	, -	NIZATIONAL ID#, if any	
	DEBTOR	CORP		OR	15993		NON
2. ADDITIONAL DEBTO 2a. ORGANIZATION'S N		LEGAL NAME - insert o	inly <u>one</u> deb	tor name (2a or 2b) - do not abbreviate or combi	ne namés		······································
OR 26. INDIVIDUAL'S LAST	NAME			FIRST NAME	MIDDLE	VAME	SUFFIX
2c. MAILING ADDRESS				СПУ	STATE	POSTAL CODE	COUNTRY
2d. SEE INSTRUCTIONS	ADD'L INFO RE ORGANIZATION DEBTOR	29. TYPE OF ORGANIZA	TION	2f. JURISDICTION OF ORGANIZATION	2g. ORG/	NIZATIONAL ID #, if any	Non
3. SECURED PARTY'S	NAME (or NAME of) AME	TOTAL ASSIGNEE of ASSIG	GNORS/P)-	insertonly <u>one</u> secured party name (3a or 3b)			-

CNH CAPITAL AMERICA LLC

TAKEUC TB145

100 BRUBAKER AVE

3c. MAILING ADDRESS

OR 36 INDIVIDUAL'S LAST NAME

EXCAVAT.

14514744

NEW HOLLAND

5. ALTERNATIVE DESIGNATION [If applicable]: LESSEE/LESSOR CONSIGNEE/CONSIGNOR BAILEE/BAILOR SELLER/BUYE	R AG. LIEN NON-UCC FILING
6. This Financing Statement is to be field (for record) (or recorded) in the REAL TABLE (ADDITIONAL FEE) (optional)	All Deblors Debtor 1 Debtor 2
8. OPTIONAL FILER REFERENCE DATA 06814309226120100401	•
OR-Secretary Of State	
FILING OFFICE COPY — UCC FINANCING STATEMENT (FORM UCC1) (REV. 05/22/02)	Corporation Service Company 2711 Centerville Rd, Ste. 400

EXHIPIT C
PACE GOF G

POSTAL CODE

17557

1	<u>CERTIFICATE OF SERVICE</u>
2	I hereby certify that on the 26th day of January, 2010, I served the foregoing AMENDE
3	OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN:
4	by delivering a true and correct copy thereof via ECF to:
5	• PATTI H BASS ecf@bass-associates.com
6	• Brian D. Lynch c0urtmai1@portland13.com, c0urtmai1@portland13ct.com
7	• ANDREW R NAYLOR anaylor@sglaw.com, epaetsch@sglaw.com
8	• ALEX I POUST apoust@schwabe.com, dsalt@schwabe.com;docket@schwabe.com
9	• TODD TRIERWEILER orecf@bankruptcylawctr.com, orecf@whiz.to
10	• US Trustee, Portland USTPRegion18.PL.ECF@usdoj.gov
11	• JAMES MIERSMA ecfor@rcflegal.com
12	DATED this 26 th day of January, 2010.
13	
14	/s/ Alex I. Poust Alex I. Poust, OSB #925155
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Page 1 - CERTIFICATE OF SERVICE

SCHWABE, WILLIAMSON & WYATT, P.C. Attorneys at Law Pacwest Center 1211 SW 5th Ave., Suite 1900 Portland, OR 97204 503.222.9981